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IN THE

Supreme Court of the United States

October Term, 1957.

ERIE RAILROAD COMPANY AND THE PORT OF NEW YORK AUTHORITY, *Appellants,*
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY, Et Al., *Appellees,*
No. 465

THE NEW YORK CENTRAL RAILROAD COMPANY, *Appellant,*
vs.
THE BALTIMORE AND OHIO RAILROAD COMPANY, Et Al., *Appellees,*
No. 466

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND.

APPELLANTS' MOTION AND BRIEF TO RECALL AND CLARIFY THE JUDGMENT.

M. C. SMITH, JR.,
SIDNEY GOLDSTEIN,
FRANCIS A. MULHERN,
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INDEX

	PAGE
Appellants' Motion to Recall and Clarify the Judgment	1
Brief in Support of Motion to Recall and Clarify the Judgment	3
Statement	3
Argument	5
I. Issuance Of An Injunction Against The New York Rates Is Contrary To The Plain Meaning Of The Order And Judgment Of This Court	5
II. By Necessary Implication The Order Of This Court Has Precluded The District Court From Enjoining Rate Schedules Which Were Ordered Remanded To The Commission For Further Consideration	6
Conclusion	11
Appendix A	12
Appendix B	15
Appendix C	17
Appendix D	21

Table of Cases Cited.

	PAGE
Algoma Coal & Coke Co. v. U. S., (E. D. Va., 1935) 11 F. Supp. 487	9
Arizona Grocery Co. v. Atchison, T. & S. F. R. Co., 284 U. S. 370 (1932)	8
Board v. G. N. Ry., 281 U. S. 412 (1930)	8
Cahill v. N. Y. N .H. & H. R. Co., 351 U. S. 183	4
Carlsen v. U. S., (S. D. N. Y. 1952) 107 F. Supp. 398	9
Columbus Iron & Steel v. Kanawha & M. Ry. Co., (S. D. W. Va., 1909) 171 F. 713	6
Director General v. Viscose Co., 254 U. S. 498 (1921)	9
Great Northern Ry. Co. v. Kalispell Lumber Co., (9 Circ. 1908) 165 F. 25	8
Houston Coal & Coke Co. v. Norfolk & W. Ry., (W. D. Va., 1909) 171 F. 723	7
Kentucky v. Powers, 201 U. S. 1	6
M. C. Kiser Co. v. Central of Georgia Ry. Co. (S. D. G. A. 1916) 236 F. 573 aff'd. 329 F. 718	8
National Bus. Traffic Ass'n. v. U. S., (D. N. J. 1954) 122 F. Supp. 876, 878	7
Palermo v. Luckenbach S. S. Co., 355 U. S. 910	4
Procter & Gamble v. Coe (D. C. Cir. 1738) 96 F. 2d 518, cert. den. 305 U. S. 604	9
Thornton v. Carter, (8 Circ. 1940) 109 F. 2d. 316	6
United States v. Chicago, M., St. P. & P. R. Co., 294 U. S. 499	10

Statutes Cited.

28 U. S. C. §1336	6
Section 15(7) Interstate Commerce Act.	8

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1957.

RIE RAILROAD COMPANY AND THE PORT OF NEW YORK AUTHORITY, *Appellants,*

vs.

HE BALTIMORE AND OHIO RAILROAD COMPANY, Et Al., *Appellees,*

No. 465

HE NEW YORK CENTRAL RAILROAD COMPANY, *Appellant,*

vs.

HE BALTIMORE AND OHIO RAILROAD COMPANY, Et Al., *Appellees,*

No. 466

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND.

APPELLANTS' MOTION TO RECALL AND CLARIFY THE JUDGMENT.

Appellants, Erie Railroad Company, The New York Central Railroad Company and The Port of New York Authority, move to recall this Court's judgment issued to the United States District Court for the District of Maryland on January 9, 1958, for the reason that the District Court has interpreted said judgment and this Court's order of December 9, 1957, to authorize the issuance by the District Court of an injunction against making effective reduced rates on iron ore from New York to the Youngstown area on a level with those applicable from Philadelphia and Baltimore, pending reconsideration and final decision by the Interstate Commerce Commission pursuant to the remand of the District Court, whereas appellants

say that said judgment and order should be interprete
so as to prohibit any such action by the District Cour
Appellants respectfully request that said judgment of thi
Court be recalled and clarified accordingly.

Respectfully submitted,

SAMUEL H. MOERMAN
RICHARD J. MURPHY
Attorneys for Appellants

BRIEF IN SUPPORT OF MOTION TO RECALL AND CLARIFY THE JUDGMENT.

STATEMENT.

In February, 1953 the rail carriers serving the ports of Philadelphia and New York published reduced rates from those ports on imported iron ore to the Youngstown area, equalizing their rates with those applying from Baltimore to the same area. After suspension and investigation, Division 2 of the Interstate Commerce Commission, in a report dated February 5, 1954, found the rates from Philadelphia lawful but by a 2-to-1 vote disapproved the rates from New York. The Philadelphia carrier published a supplementary schedule making the equalizing rates effective February 19, 1954, whereupon the Baltimore interests filed suit in the Maryland District Court asking a restraining order pending reconsideration by the entire Commission. That court refused to issue the order on the ground that the administrative process had not been completed, with the result that the equalizing rates from Philadelphia went into effect and have since prevailed. On reconsideration the entire Commission not only affirmed the Division's decision as to the lawfulness of the Philadelphia rates but also approved the New York rates. Upon the filing of a suit by the Baltimore interests to set aside the Commission's order, the Maryland District Court issued a temporary restraining order against the New York rates. After hearing, the District Court issued its decree, appended hereto as Appendix A, ordering the Commission's order to be vacated insofar as it approved the New York rates and permanently enjoining such schedules from being made effective. Upon appeal, this Court's order, appended hereto as Appendix B, vacated "so much of the decree of the District Court as did not affirm the order of the Commission" and remanded the cause "for appropriate disposition not inconsistent with" its opinion.

Upon remand, the District Court issued a new "Decree," appended hereto as Appendix C, providing in part as follows:

> 5. That pending reconsideration and final decision by the Commission pursuant to the remand, the tariff schedules on iron ore from New York filed to become effective February 9, 1953 shall not be made effective or permitted to become effective.

Thus, although the District Court correctly declined to enjoin the Philadelphia rates before completion of the administrative process, it now refuses to do the same with respect to the New York rates, even though the Commission had found the New York rates lawful and this Court ordered vacated "so much of the decree of the District Court as did not affirm the order of the Commission." More than 5 years after the New York rail carriers originally published equalizing rates to the Youngstown area they are still unable to make such rates effective and to share in the tremendous volume of import iron ore which their Philadelphia and Baltimore competitors have been monopolizing for the past 4 years. Unless this Court recalls and clarifies its judgment as requested, the New York rail carriers will be effectively blocked from participating in this traffic for several more years, even though there is now little or no doubt that their proposed reduced rates will ultimately be found lawful.

It is submitted that the issuance of a new injunction by the District Court is (1) contrary to the plain meaning of the order and judgment of this Court and (2) outside the jurisdiction of the District Court in the present circumstances.

The relief sought by this motion has been granted in other cases, *Cahill* v. *New York, N.H. & H.R. Co.*, 351 U.S. 183; *Palermo* v. *Luckenbach S.S. Co.*, 355 U.S. 910, decided January 6, 1958.

ARGUMENT.

I.

ISSUANCE OF AN INJUNCTION AGAINST THE NEW YORK RATES IS CONTRARY TO THE PLAIN MEANING OF THE ORDER AND JUDGMENT OF THIS COURT.

In its opinion and order issued in this case, 355 U.S. 175, on December 9, 1957, this Court ordered that:

> "... on the appeals before us, so much of the decree of the District Court as did not affirm the order of the Commission is vacated, and the cause is remanded for appropriate disposition not inconsistent with this opinion."

It is clear then that the above order required the District Court to vacate its decree of May 22, 1957, except insofar as it had affirmed a portion of the Commission's order. The original decree of the District Court had vacated the Commission's order insofar as it had approved the New York rates and expressly enjoined their effectiveness. Since this Court's order provided that "so much of the decree of the District Court as did not affirm the order of the Commission is vacated", the injunction against the New York rates, as one part of the District Court's decree of May 22, 1957 which "did not affirm" the Commission's order, should have been vacated. That part of the decree which enjoined the New York rates clearly did not "affirm" the Commission's order and it is not susceptible to such an interpretation by any mode of construction. Since, as is apparent from the original District Court decree set forth in Appendix A, *infra*, P. 1a, the injunction was an integral part of the "decree of the District Court" and one which "did not affirm the order of the Commission", it "is vacated" and it should be so indicated by this Court.

Thus, since the meaning of this Court's order was clear, it was incumbent upon the District Court "not to alter it or give any further or other relief" not directed by the order such as imposing an injunction against the rates which are now before the Commission on reconsideration. See *Thornton* v. *Carter*, (8th Circ., 1940) 109 F.2d 316.

II.

BY NECESSARY IMPLICATION THE ORDER OF THIS COURT HAS PRECLUDED THE DISTRICT COURT FROM ENJOINING RATE SCHEDULES WHICH WERE ORDERED REMANDED TO THE COMMISSION FOR FURTHER CONSIDERATION.

The construction of this Court's order contended for by appellants is the only construction consistent with the jurisdiction of the Federal District Court. The Federal District Courts of the United States can constitutionally exercise only such jurisdiction as may be granted to them by Congressional enactment. *Kentucky* v. *Powers*, 201 U.S. 1 (1906). Thus there is no inherent power in the federal judiciary to enjoin the publication, filing or effectiveness of rates.

Prior to the passage of the Interstate Commerce Act no jurisdiction existed with respect to that subject because Congress had not exercised its right to so regulate rates. *Columbus Iron & Steel* v. *Kanawha & M. Ry. Co.*, (S.D. W.Va., 1909) 171 F. 713. At the present time the Federal Courts have the power to enjoin rates but they may exercise this statutory power only as ancillary relief where the Court has jurisdiction over an order[1] of the Interstate Commerce Commission which concerns the rates enjoined

[1] 28 U.S.C. § 1336
"Interstate Commerce Commission's Orders. Except as otherwise provided by Act of Congress, the District Courts shall have jurisdiction of any civil action to enforce, enjoin, set aside, annul or suspend, in whole or in part, any order of the Interstate Commerce Commission."

and in which the Court finds the Commission order to be invalid. There is, therefore, no jurisdiction in the Federal Courts to enjoin the publication or effectiveness of a rate apart from the jurisdiction to enjoin a Commission order. *Houston Coal & Coke Co.* v. *Norfolk & W. Ry.*, (W.D. Va., 1909) 171 F. 723.

In the course of its opinion, this Court summarized the previous proceedings before the District Court as follows:

> "... an appropriate District Court held that the Commission's approval of parity between New York and Baltimore was without basis in the record and ordered that portion of the Commission's order vacated. The Court further held that the Commission's approval of parity between Philadelphia and Baltimore was not supported by essential findings as to ocean freight costs and remanded that portion of the Commission's order for more explicit findings. *The Court also granted other relief subsidiary to these actions.*" (Emphasis supplied)

Clearly this Court considered the action of the District Court in ordering vacation of that part of Commission's order which approved the rates from New York as the *principal relief* granted and considered the injunction against the tariffs naming rates from New York as only subsidiary or *ancillary relief* necessary to implement the principal relief. But now this case has been remanded to the Commission for a new order. The order of this Court terminated this litigation and withdrew the Commission order, which was the basis for the District Court's jurisdiction, from the further consideration of that Court. Any further judicial action concerning a Commission order with respect to the involved rates would have to be invoked by a new action, which of course can not be brought until the Commission enters a further order in regard to these rates. *National Bus. Traffic Ass'n.* v. *U.S.*, (D. N.J., 1954) 122 F. Supp. 876, 878. Since by this Court's order the proceeding

was returned to the jurisdiction of the Commission, there is no longer any "order" before the District Court to which an injunction of the involved rates can be ancillary. Moreover, the District Court has not by its order reserved any jurisdiction over the subject matter, i.e., the Commission order. It is evident then that such an injunction was an assumption by the District Court of the bare power to suspend rates while they are before the Commission for its administrative determination of their reasonableness.

But such an injunction cannot be issued by a District Court. The power to suspend the effectiveness of rates prior to the final order of the Commission is one which has been entrusted exclusively to the Commission by Section 15(7) of the Interstate Commerce Act which is set forth in Appendix D, *infra*, P. 12a. The controlling rule of law that the Federal Courts have no power to enjoin rates independently of an injunction against an Interstate Commerce Commission order is a corollary of the fundamental principle that the fixing of rates for the future is an administrative function of a legislative nature. *Arizona Grocery Co.* v. *Atchison, Topeka, & Santa Fe Railroad Co.*, 284 U.S. 370 (1932); *Great Northern Ry. Co.* v. *Kalispell Lumber Co.*, (9th Circ., 1908) 165 F. 25. A determination by a Court, acting prior to the Commission's finding of the facts as directed by the remand, that the rates should be enjoined would be the farthest thing from the traditionally limited judicial power to test the legality of final Commission orders.

The law is to the contrary. The power to suspend rates prior to the entry of the final administrative decision is one exclusively entrusted to the Commission. In *Board* v. *Great Northern Ry.*, 281 U.S. 412 (1930), Chief Justice Hughes stated that, "This power of suspension was entrusted to the Commission only." In *M. C. Kiser Co.* v. *Central of Georgia Ry. Co.*, (S.D. G.A., 1916) 236 Fed. 573, aff'd 239

Fed. 718, in concluding that the Commission's power to suspend rates is exclusive, the Court held that this statutory power of the Commission ousts the United States Courts of their general equity jurisdiction of that particular subject. To the same effect are *Director General* v. *Viscose Co.*, 254 U.S. 498 (1921) and *Algoma Coal and Coke Co.* v. *U. S.*, (E.D. Va., 1935) 11 F. Supp. 487. Since the Commission has not as yet completed its consideration of these rates and has yet to enter its final order pertaining to them, the District Court lacked jurisdiction to enjoin these rates. *Carlsen* v. *U.S.*, (S.D. N.Y., 1952) 107 F. Supp. 398.

Again, the well settled rule is that the Federal Courts have not the power to interfere by injunction while a matter committed to the jurisdiction and control of an administrative agency is pending before that agency. *Procter & Gamble* v. *Coe*, (D.C. Cir., 1938) 96 F.2d 518, cert. den. 305 U.S. 604. The considerations which have given rise to the doctrine of "primary jurisdiction" can never be more compelling than they are in this case. For, inasmuch as this Court had ordered that the *reasonableness* of these rates must be reconsidered by the Commission in the light of the interrelationship between the three ports it is an *a fortiori* proposition that the case at this stage presented at least an ambiguous case with respect to the *lawfulness* of the New York rates. It was, therefore, incumbent upon the District Court to stay its hand after this Court had decided that the validity of these rates was still an open question and that the answer to that question must be provided by the Commission in the first instance.

The regulatory scheme as created by Congress is such that the carriers have the right to initiate rates which become effective by their own force unless the Commission in its exclusive discretion chooses to suspend them pending its final determination of their reasonableness. *United States*

v. *Chicago, M., St.P. & P. R. Co.*, 294 U.S. 499. Moreover, Section 15(7) specifically provides that if the proceeding has not been concluded within the suspension period the proposed rate "shall go into effect at the end of such period." Thus if there can be said to have been a degree of ambiguity present in the opinion and order of this Court there can be no doubt that the doctrine of "primary jurisdiction" and the Constitutional inhibitions on the jurisdiction of federal district courts dictate that the order be interpreted as necessarily implying that there be no injunction against any of the rates which were remanded to the Commission for further consideration.

CONCLUSION.

For the foregoing reasons, appellants respectfully pray that their motion be granted.

Dated: Chicago, Illinois
April 30, 1958

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APPENDIX.

APPENDIX A.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MARYLAND.

CIVIL ACTION NO. 9237.

The Baltimore and Ohio Railroad Company, Canton Railroad Company, Western Maryland Railway Company, Baltimore Association of Commerce, The Baltimore Chamber of Commerce, The Steamship Trade Association of Baltimore, Inc., Baltimore Custom House Brokers and Forwarders Association, The Mayor and City Council of Baltimore, Plaintiffs.

vs.

United States of America, Interstate Commerce Commission and The Pennsylvania Railroad Company, and C. W. Boin, Agent, and The New York Central Railroad Company and Erie Railroad Company, Defendants.

* * * *

(FILED 22D MAY 1957)

* * * *

DECREE.

This 22d day of May, 1957, the Court adopts the findings of fact and conclusions of law appearing in the Opinion filed herein on April 26, 1957, and holds that the Interstate Commerce Commission's Order of October 1, 1956 in its Investigation and Suspension Docket No. 6074, *Iron Ore from Eastern Ports to Central Freight Association Points*, should be (1) in part vacated and the continuance and enforcement of said part enjoined, (2) in part remanded to the said Commission to make more explicit findings, and (3) in part affirmed: to wit, it is:

ORDERED, ADJUDGED AND DECREED.

1. That the order of the Interstate Commerce Commission dated October 1, 1956, is vacated insofar as it approves the tariff schedules on iron ore from New York filed to be effective February 9, 1953, and authorizes the establishment of the rates on iron ore named in said schedules.

2. That the Temporary Restraining Order issued by the Court on October 26, 1956, enjoining the United States and the Interstate Commerce Commission from taking, authorizing, approving, or permitting any action, by any railroad company, particularly the New York Central Railroad Company and the Erie Railroad Company, which would have the effect of establishing or making effective the tariff schedules on iron ore from New York filed to be effective February 9, 1953, is made permanent.

3. That the Interstate Commerce Commission shall make and enter an appropriate order requiring the New York Central Railroad Company and the Erie Railroad Company to cancel their tariff schedules on iron ore from New York published to be effective February 9, 1953.

4. That the order of the Interstate Commerce Commission dated October 1, 1956, insofar as it approves the tariff schedules of the Pennsylvania Railroad Company on iron ore from Philadelphia filed to become effective February 9, 1953, is not supported by essential basic findings, and therefore is remanded to the Interstate Commerce Commission to make more explicit findings as instructed by the Court in the Opinion filed herein.

5. That the rates named in the tariff schedules of the Pennsylvania Railroad from Philadelphia published to become effective on February 9, 1953, be permitted to remain in effect pending said reconsideration and final decision by the Interstate Commerce Commission.

6. That the order of the Interstate Commerce Commission dated October 1, 1956, is affirmed insofar as it disapproves tariff schedules on import iron ore from Baltimore published to be effective February 16, 1953.

7. That the order of the Interstate Commerce Commission dated October 1, 1956, is affirmed insofar as it disapproves tariff schedules on import iron ore from Philadelphia published to be effective February 16, 1953, and March 11, 1953.

/s/ MORRIS A. SOPER,
United States Circuit Judge.

/s/ W. CALVIN CHESNUT,
United States District Judge.

/s/ R. DORSEY WATKINS,
United States District Judge.

APPENDIX B.

ORDER.

Per Curiam.

This litigation involves the validity of an order of the Interstate Commerce Commission dealing with the proper relationship, under the National Transportation Policy (§1 of the Transportation Act of 1940, 54 Stat. 899, 49 U.S.C., at p. 7107), of railroad tariffs on imported iron ore shipped to a steel-producing area in Pennsylvania, Ohio and West Virginia (the so-called "differential territory" of the Central Freight Association) from the ports of New York, Philadelphia and Baltimore. A tariff differential in favor of Baltimore had existed prior to this controversy. In a succession of tariff reductions, railroads serving New York and Philadelphia filed schedules designed to establish parity of rates among the several ports, while railroads serving Baltimore filed schedules designed to maintain the differential. Upon protest against the New York and Philadelphia schedules by Baltimore civic and commercial interests and railroads serving that port, the Interstate Commerce Commission instituted an investigation as a result of which Division 2 of the Commission filed a report approving the tariff schedules giving Philadelphia parity with Baltimore but finding all other schedules that had been issued in this series of reductions to be not just and reasonable. 291 I.C.C. 527. On petition of various parties, the Commission reopened the proceedings, and on October 1, 1956, the full Commission modified the findings of the Division 2 report to the extent of finding the New York schedules, as well as the Philadelphia schedules, to be just and reasonable, 299 I.C.C. 195. The full Commission's order was challenged in a proceeding instituted under 28 U.S.C. §1336, and an appropriate District Court held that the Commission's approval of parity between New York and Baltimore was

without basis in the record and ordered that portion of the Commission's order vacated. The court further held that the Commission's approval of parity between Philadelphia and Baltimore was not supported by essential findings as to ocean freight costs and anticipated traffic and remanded that portion of the Commission's order for more explicit findings. The court also granted other relief subsidiary to these actions. 151 F. Supp. 258. These are the only portions of the decision below with which we are here concerned. We put to one side those provisions of the decree below in which the District Court affirmed other portions of the Commission's order.

From what appears, it is not precluded that the Commission may find an interrelationship, within the purview of the National Transportation Policy, *supra*, among lawful tariffs to be established between these three ports and the "differential territory." In this light we deem it appropriate that, in reconsidering the relationship between the Philadelphia and Baltimore schedules pursuant to the remand of the District Court, the Commission should be free to reconsider and take action upon the New York schedules. In carrying out the District Court's direction regarding the Philadelphia rates, the Commission should be permitted to take into account the effect of New York rates on the tariff relationship between Philadelphia and Baltimore and the effect of that relationship on New York and to enter such orders with respect to all three ports as the Commission may find to be required by their interrelationship. Accordingly, on the appeals before us, so much of the decree of the District Court as did not affirm the order of the Commission is vacated, and the cause is remanded for appropriate disposition not inconsistent with this opinion.

It is so ordered.

THE CHIEF JUSTICE AND MR. JUSTICE BLACK would affirm the judgment of the District Court.

APPENDIX C.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MARYLAND.

The Baltimore and Ohio Railroad Company, Canton Railroad Company, Western Maryland Railway Company, Baltimore Association of Commerce, The Baltimore Chamber of Commerce, The Steamship Trade Association of Baltimore, Inc., Baltimore Custom House Brokers and Forwarders Association, The Mayor and City Council of Baltimore,

Plaintiffs,

vs.

United States of America, Interstate Commerce Commission and The Pennsylvania Railroad Company, and C. W. Boin, Agent, and The New York Central Railroad Company and Erie Railroad Company,

Defendants.

Civil Action
No. 9237

DECREE.

The decree of this Court entered herein on May 22, 1957 having been appealed to the Supreme Court of the United States, and that Court by its Order entered December 9, 1957, in *Interstate Commerce Commission et al.* v. *Baltimore & Ohio R.R. Co. et al.*, Nos. 463, 464, 465, 466, 467, 468 and 473, October Term, 1957, having held that it is not precluded that the Interstate Commerce Commission may find an interrelationship within the purview of the National Transportation Policy, among lawful tariffs to be established on imported iron ore from the ports of New York, Philadelphia and Baltimore to steel producing areas in

Pennsylvania, Ohio and West Virginia, that in this light it is appropriate that, in reconsidering the relationship between the Philadelphia and Baltimore tariffs pursuant to the remand of this court, the Commission should be free to reconsider and take action upon the New York tariffs, and that in carrying out this court's direction regarding the Philadelphia rates, the Commission should be permitted to take into account the effect of New York rates on the tariff relationship between Philadelphia and Baltimore and the effect of that relationship on New York, and to enter such orders with respect to all three ports as the Commission may find to be required by their interrelationship, and the Court having ordered vacated so much of the decree of this court as did not affirm the order of the Commission of October 1, 1956 in *Iron Ore from Eastern Ports to Central Freight Association Points,* 299 I.C.C. 195, and the Court having remanded the cause to this court for appropriate disposition not inconsistent with its opinion of December 9, 1957, and counsel for the parties in interest having been heard.

Therefore this 18th day of March 1958, the Court adopts the findings of fact and conclusions of law, appearing in the Opinion filed herein on April 26, 1957, except as modified by the Opinion and Order of the Supreme Court; and holds that the Interstate Commerce Commission's Order of October 1, 1956 in its Investigation and Suspension Docket No. 6074, *Iron Ore from Eastern Ports to Central Freight Association Points,* should be (1) in part remanded to the said Commission to make more explicit findings, and (2) in part affirmed:

To Wit it is:

ORDERED, ADJUDGED AND DECREED.

1. That the decree herein of May 22, 1957 be, and it hereby is, vacated.

2. That the order of the Commission dated October 1, 1956 insofar as it approves the tariff schedules of the Pennsylvania Railroad Company on import iron ore from Philadelphia filed to become effective February 9, 1953, is remanded to the Commission to make more explicit findings in accordance with the opinion of this Court filed herein as modified by the order of the Supreme Court.

3. That the rates named in the tariff schedules of the Pennsylvania Railroad from Philadelphia published to become effective on February 9, 1953 be permitted to remain in effect pending said reconsideration and final decision by the Interstate Commerce Commission, and that pending said reconsideration and final decision, rate parity on iron ore between ports of Baltimore and Philadelphia and the destinations here involved be retained.

4. That the order of the Commission dated October 1, 1956, insofar as it approves the tariff schedules on import iron ore from New York filed to become effective February 9, 1956, is remanded to the Commission to reconsider the lawfulness of such tariff schedules.

5. That pending reconsideration and final decision by the Commission pursuant to the remand, the tariff schedules on iron ore from New York filed to become effective February 9, 1953 shall not be made effective or permitted to become effective.

6. That the order of the Interstate Commerce Commission dated October 1, 1956 is affirmed insofar as it disapproves tariff schedules on import ore from Baltimore published to become effective February 16, 1953.

7. That the order of the Interstate Commerce Commission dated October 1, 1956 is affirmed insofar as it disapproves tariff schedules on import iron ore from Philadelphia published to become effective February 16, 1953 and March 11, 1953.

/s/ MORRIS A. SOPER

Morris A. Soper
United States Circuit Judge.

/s/ W. CALVIN CHESNUT

W. Calvin Chesnut
United States District Judge.

/s/ R. DORSEY WATKINS

R. Dorsey Watkins
United States District Judge.

APPENDIX D.

The Interstate Commerce Act, Sec. 15 (7):

(7) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission, upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension, may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge classification, regulation, or practice, but not for a longer period than seven months beyond the time when it would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period; but in case of a proposed increased rate or charge for or in respect to the transportation of property, the Commission may by order require the interested carrier or carriers to keep accurate account in detail of all amounts received by reason of such increase, specifying by

whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require the interested carrier or carriers to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, after the date this amendatory provision takes effect, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

28 U.S.C. Sec. 1336.

§ 1336. Interstate Commerce Commission's orders.

Except as otherwise provided by Act of Congress, the district courts shall have jurisdiction of any civil action to enforce, enjoin, set aside, annul or suspend, in whole or in part, any order of the Interstate Commerce Commission. June 25, 1948, c. 646, 62 Stat. 931.